

109TH CONGRESS
1ST SESSION

S. 1118

To amend the Reclamation Reform Act of 1982 to reduce irrigation subsidies,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2005

Mr. FEINGOLD introduced the following bill; which was read twice and
referred to the Committee on Energy and Natural Resources

A BILL

To amend the Reclamation Reform Act of 1982 to reduce
irrigation subsidies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Irrigation Subsidy Re-
5 duction Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Federal reclamation program has been
9 in existence for over 90 years, with an estimated
10 taxpayer investment of over \$70,000,000,000;

1 (2) the program has had and continues to have
2 an enormous effect on the water resources and
3 aquatic environments of the western States;

4 (3) irrigation water made available from Fed-
5 eral water projects in the West is a very valuable re-
6 source for which there are increasing and competing
7 demands;

8 (4) the justification for providing water at less
9 than full cost was to benefit and promote the devel-
10 opment of small family farms and exclude large cor-
11 porate farms, but this purpose has been frustrated
12 over the years due to inadequate implementation of
13 subsidy and acreage limits;

14 (5) below-cost water prices tend to encourage
15 excessive use of scarce water supplies in the arid re-
16 gions of the West, and reasonable price increases to
17 the wealthiest western farmers would provide an eco-
18 nomic incentive for greater water conservation;

19 (6) the Federal Government has increasingly
20 applied eligibility tests based on income for Federal
21 entitlement and subsidy programs, measures that
22 are consistent with the historic approach of the rec-
23 lamation program's acreage limitations that seek to
24 limit water subsidies to smaller farms; and

1 (7) including a means test based on gross in-
 2 come in the reclamation program will increase the
 3 effectiveness of carrying out the family farm goals of
 4 the Federal reclamation laws.

5 **SEC. 3. AMENDMENTS.**

6 (a) DEFINITIONS.—Section 202 of the Reclamation
 7 Reform Act of 1982 (43 U.S.C. 390bb) is amended—

8 (1) by redesignating paragraphs (7), (8), (9),
 9 (10), and (11) as paragraphs (9), (10), (11), (12),
 10 and (13), respectively;

11 (2) in paragraph (6), by striking “owned or op-
 12 erated under a lease which” and inserting “that is
 13 owned, leased, or operated by an individual or legal
 14 entity and that”;

15 (3) by inserting after paragraph (6) the fol-
 16 lowing:

17 “(7) LEGAL ENTITY.—The term ‘legal entity’
 18 includes a corporation, association, partnership,
 19 trust, joint tenancy, or tenancy in common, or any
 20 other entity that owns, leases, or operates a farm
 21 operation for the benefit of more than 1 individual
 22 under any form of agreement or arrangement.

23 “(8) OPERATOR.—

24 “(A) IN GENERAL.—The term ‘operator’—

“(i) means an individual or legal entity that operates a single farm operation on a parcel (or parcels) of land that is owned or leased by another person (or persons) under any form of agreement or arrangement (or agreements or arrangements); and

“(ii) if the individual or legal entity—

“(I) is an employee of an individual or legal entity, includes the individual or legal entity; or

“(II) is a legal entity that controls, is controlled by, or is under common control with another legal entity, includes each such other legal entity.

“(B) OPERATION OF A FARM OPERATION.—For the purposes of subparagraph (A), an individual or legal entity shall be considered to operate a farm operation if the individual or legal entity is the person that performs the greatest proportion of the decisionmaking for and supervision of the agricultural enterprise on land served with irrigation water.”; and

(4) by adding at the end the following:

1 “(14) SINGLE FARM OPERATION.—

2 “(A) IN GENERAL.—The term ‘single farm
3 operation’ means the total acreage of land
4 served with irrigation water for which an indi-
5 vidual or legal entity is the operator.

6 “(B) RULES FOR DETERMINING WHETHER
7 SEPARATE PARCELS ARE OPERATED AS A SIN-
8 GLE FARM OPERATION.—

9 “(i) EQUIPMENT—AND LABOR—SHAR-
10 ING ACTIVITIES.—The conduct of
11 equipment- and labor-sharing activities on
12 separate parcels of land by separate indi-
13 viduals or legal entities shall not by itself
14 serve as a basis for concluding that the
15 farming operations of the individuals or
16 legal entities constitute a single farm oper-
17 ation.

18 “(ii) PERFORMANCE OF CERTAIN
19 SERVICES.—The performance by an indi-
20 vidual or legal entity of an agricultural
21 chemical application, pruning, or har-
22 vesting for a farm operation on a parcel of
23 land shall not by itself serve as a basis for
24 concluding that the farm operation on that
25 parcel of land is part of a single farm op-

1 eration operated by the individual or entity
2 on other parcels of land.”.

3 (b) IDENTIFICATION OF OWNERS, LESSEES, AND OP-
4 ERATORS AND OF SINGLE FARM OPERATIONS.—The Rec-
5 lamation Reform Act of 1982 (43 U.S.C. 390aa et seq.)
6 is amended by inserting after section 201 the following:
7 **“SEC. 201A. IDENTIFICATION OF OWNERS, LESSEES, AND**
8 **OPERATORS AND OF SINGLE FARM OPER-**
9 **ATIONS.**

10 “(a) IN GENERAL.—Subject to subsection (b), for
11 each parcel of land to which irrigation water is delivered
12 or proposed to be delivered, the Secretary shall identify
13 a single individual or legal entity as the owner, lessee, or
14 operator.

15 “(b) SHARED DECISIONMAKING AND SUPER-
16 VISION.—If the Secretary determines that no single indi-
17 vidual or legal entity is the owner, lessee, or other indi-
18 vidual that performs the greatest proportion of decision-
19 making for and supervision of the agricultural enterprise
20 on a parcel of land—

21 “(1) all individuals and legal entities that own,
22 lease, or perform a proportion of decisonmaking and
23 supervision that is equal as among themselves but
24 greater than the proportion performed by any other

1 individual or legal entity shall be considered jointly
 2 to be the owner, lessee, or operator; and

3 “(2) all parcels of land of which any such indi-
 4 vidual or legal entity is the owner, lessee, or oper-
 5 ator shall be considered to be part of the single farm
 6 operation of the owner, lessee, or operator identified
 7 under subsection (1).”.

8 (c) PRICING.—Section 205 of the Reclamation Re-
 9 form Act of 1982 (43 U.S.C. 390ee) is amended by adding
 10 at the end the following:

11 “(d) SINGLE FARM OPERATIONS GENERATING MORE
 12 THAN \$500,000 IN GROSS FARM INCOME.—

13 “(1) IN GENERAL.—Notwithstanding sub-
 14 sections (a), (b), and (c), in the case of—

15 “(A) a qualified recipient that reports
 16 gross farm income from a single farm operation
 17 in excess of \$500,000 for a taxable year; or

18 “(B) a limited recipient that received irri-
 19 gation water on or before October 1, 1981, and
 20 that reports gross farm income from a single
 21 farm operation in excess of \$500,000 for a tax-
 22 able year;

23 irrigation water may be delivered to the single farm
 24 operation of the qualified recipient or limited recipi-
 25 ent at less than full cost to a number of acres that

1 does not exceed the number of acres determined
2 under paragraph (2).

3 “(2) MAXIMUM NUMBER OF ACRES TO WHICH
4 IRRIGATION WATER MAY BE DELIVERED AT LESS
5 THAN FULL COST.—The number of acres determined
6 under this subparagraph is the number equal to the
7 number of acres of the single farm operation multi-
8 plied by a fraction, the numerator of which is
9 \$500,000 and the denominator of which is the
10 amount of gross farm income reported by the quali-
11 fied recipient or limited recipient in the most recent
12 taxable year.

13 “(3) INFLATION ADJUSTMENT.—

14 “(A) IN GENERAL.—The \$500,000 amount
15 under paragraphs (1) and (2) for any taxable
16 year beginning in a calendar year after 2004
17 shall be equal to the product of—

18 “(i) \$500,000, multiplied by

19 “(ii) the inflation adjustment factor
20 for the taxable year.

21 “(B) INFLATION ADJUSTMENT FACTOR.—

22 The term ‘inflation adjustment factor’ means,
23 with respect to any calendar year, a fraction the
24 numerator of which is the GDP implicit price
25 deflator for the preceding calendar year and the

denominator of which is the GDP implicit price deflator for 2004. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

“(C) GDP IMPLICIT PRICE DEFLATOR.—

For purposes of subparagraph (B), the term ‘GDP implicit price deflator’ means the first revision of the implicit price deflator for the gross domestic product as computed and published by the Secretary of Commerce.

“(D) ROUNDING.—If any increase deter-

mined under subparagraph (A) is not a multiple of \$100, the increase shall be rounded to the next lowest multiple of \$100.”.

(d) CERTIFICATION OF COMPLIANCE.—Section 206

of the Reclamation Reform Act of 1982 (43 U.S.C. 390ff) is amended to read as follows:

“SEC. 206. CERTIFICATION OF COMPLIANCE.

“(a) IN GENERAL.—As a condition to the receipt of

irrigation water for land in a district that has a contract described in section 203, each owner, lessee, or operator in the district shall furnish the district, in a form prescribed by the Secretary, a certificate that the owner, lessee, or operator is in compliance with this title, including

1 a statement of the number of acres owned, leased, or oper-
 2 ated, the terms of any lease or agreement pertaining to
 3 the operation of a farm operation, and, in the case of a
 4 lessee or operator, a certification that the rent or other
 5 fees paid reflect the reasonable value of the irrigation
 6 water to the productivity of the land.

7 “(b) DOCUMENTATION.—The Secretary may require
 8 a lessee or operator to submit for the Secretary’s examina-
 9 tion—

10 “(1) a complete copy of any lease or other
 11 agreement executed by each of the parties to the
 12 lease or other agreement; and

13 “(2) a copy of the return of income tax imposed
 14 by chapter 1 of the Internal Revenue Code of 1986
 15 for any taxable year in which the single farm oper-
 16 ation of the lessee or operator received irrigation
 17 water at less than full cost.”.

18 (e) TRUSTS.—Section 214 of the Reclamation Re-
 19 form Act of 1982 (43 U.S.C. 390nn) is repealed.

20 (f) ADMINISTRATIVE PROVISIONS.—

21 (1) PENALTIES.—Section 224(c) of the Rec-
 22 lamation Reform Act of 1982 (43 U.S.C. 390ww(c))
 23 is amended—

24 (A) by striking “(c) The Secretary” and
 25 inserting the following:

1 “(c) REGULATIONS; DATA COLLECTION; PEN-
2 ALTIES.—

3 “(1) REGULATIONS; DATA COLLECTION.—The
4 Secretary”; and

5 (B) by adding at the end the following:

6 “(2) PENALTIES.—Notwithstanding any other
7 provision of law, the Secretary shall establish appro-
8 priate and effective penalties for failure to comply
9 with any provision of this Act or any regulation
10 issued under this Act.”.

11 (2) INTEREST.—Section 224(i) of the Reclama-
12 tion Reform Act of 1982 (43 U.S.C. 390ww(i)) is
13 amended by striking the last sentence and inserting
14 the following: “The interest rate applicable to under-
15 payments shall be equal to the rate applicable to ex-
16 penditures under section 202(3)(C).”.

17 (g) REPORTING.—Section 228 of the Reclamation
18 Reform Act of 1982 (43 U.S.C. 390zz) is amended by in-
19 serting “operator or” before “contracting entity” each
20 place it appears.

21 (h) MEMORANDUM OF UNDERSTANDING.—The Rec-
22 lamation Reform Act of 1982 (43 U.S.C. 390aa et seq.)
23 is amended—

24 (1) by redesignating sections 229 and 230 as
25 sections 230 and 231; and

1 (2) by inserting after section 228 the following:

2 **“SEC. 229. MEMORANDUM OF UNDERSTANDING.**

3 “The Secretary, the Secretary of the Treasury, and
4 the Secretary of Agriculture shall enter into a memo-
5 randum of understanding or other appropriate instrument
6 to permit the Secretary, notwithstanding section 6103 of
7 the Internal Revenue Code of 1986, to have access to and
8 use of available information collected or maintained by the
9 Department of the Treasury and the Department of Agri-
10 culture that would aid enforcement of the ownership and
11 pricing limitations of Federal reclamation law.”.

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